

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION**

TIAMANIKA BLACKBURN,

Plaintiff,

v.

ABC LEGAL SERVICES, INC. and
FERDINAND G. AUSTRIA,

Defendants.

Case No. 11-cv-01298 JSW (NC)

**REPORT AND
RECOMMENDATION
GRANTING MOTION FOR
ATTORNEYS' FEES**

Re: Dkt. Nos. 46, 57, 62

ABC Legal Services seeks an award of attorneys' fees and costs after the District Court granted ABC's special motion to strike Blackburn's state-law claims under California's Strategic Lawsuit Against Public Participation (anti-SLAPP) statute, California Code of Civil Procedure § 425.16. The Court, however, denied ABC's motion to dismiss Blackburn's federal claim. Order Grant Mtn. Dismiss, Dkt. No. 22. This Court recommends an award of attorneys' fees to ABC as the prevailing party in the amount of \$14,615.00 and costs in the amount of \$311.50, for a total of \$14,926.50.

I. BACKGROUND

Plaintiff Tiamanika Blackburn filed this action against defendants ABC Legal Services, Inc. and Ferdinand G. Austria for violation of the Fair Debt Collection Practices Act (FDCPA), 15 U.S.C. § 1692 *et seq.*, the Rosenthal Fair Debt Collection Practices Act

1 (RFDCPA), Cal. Civ. Code Proc. § 1788 *et seq.*, and the California Business and
2 Professions Code § 17200. Compl., Dkt. No. 1. Because the Court granted ABC's
3 special motion to strike Blackburn's state-law claims, ABC now moves for attorneys' fees
4 under § 425.16(c)(1). Def.'s Mot. Att'y Fees at 2.

5 ABC argues that § 425.16(c)(1) mandates an award of attorneys' fees and costs to
6 the prevailing defendant. *Id.* ABC acknowledges, however, that courts have broad
7 discretion in determining what constitutes a reasonable amount of attorneys' fees and
8 costs to award. *Id.* ABC claims that it has incurred fees and costs amounting to
9 \$21,207.00, based on 52.9 hours of work performed in connection with the anti-SLAPP
10 motion at a rate of \$395.00 per hour and \$311.50 of costs. Weisberg Decl. Supp. Def.'s
11 Mot. Att'y Fees at 2, Dkt. No. 46-1. ABC submits the Declaration of William S.
12 Weisberg in support of its motion for attorneys' fees. *Id.*

13 Blackburn opposes the § 425.16(c)(1) motion for attorneys' fees on two alternative
14 grounds. Pl.'s Opp'n at 5. First, Blackburn argues that although the Court granted
15 ABC's motion to strike Blackburn's RFDCPA claim based on § 425.16, attorneys' fees
16 and costs should not be granted under § 425.16(c)(1). *Id.* at 3-5. Because the state
17 legislature adopted wholesale sections of the FDCPA into the RFDCPA and the purposes
18 of the FDCPA and RFDCPA are the same, the Court should interpret the RFDCPA to
19 incorporate the FDCPA's fee-shifting scheme. *Id.* The FDCPA does not award the
20 prevailing defendant costs unless the court finds that the plaintiff brought the action in
21 bad faith or for the purpose of harassment. *Rouse v. Law Offices of Rory Clark*, 603 F.3d
22 699, 701 (9th Cir. 2010). Thus, Blackburn argues that ABC is not entitled to any
23 attorneys' fees because ABC has failed to show that Blackburn brought the action in bad
24 faith or for the purpose of harassment. Pl.'s Opp'n at 3-5.

25 Alternatively, Blackburn argues that even if the Court were to grant attorneys' fees
26 under § 425.16(c)(1), the Court should award an amount that is significantly less than
27 ABC's requested amount, which Blackburn believes is based on an unreasonable numbers
28 of hours and hourly rate. *Id.*

Blackburn argues that ABC's requested fees are unreasonable because ABC has inflated both the number of hours spent on the anti-SLAPP motion and its hourly rate. *Id.* at 5-13. Further, Blackburn argues that because ABC briefed a motion to strike the state-law claims in combination with its motion to dismiss the federal claim, ABC has conflated the hours worked on each claim, and thus has inflated the attorneys' fees associated with the anti-SLAPP motion, alone. *Id.* Blackburn attempts to provide evidence of ABC's inflation by submitting June B. Coleman's declaration, which suggests that the maximum hourly rate that her clients would pay an FDCPA attorney is between \$250.00 and \$300.00. Coleman Decl. Supp. Pl.'s Opp'n at 3, Dkt. No. 57-2. In reviewing ABC's time sheet entries, Blackburn questions specific tasks, the amount of time spent on the tasks, and even the veracity of the time sheet, as a whole. Pl.'s Opp'n at 5-13. In several instances, Blackburn suggests amounts of time certain tasks should have actually taken. *Id.*

In reply, ABC argues that § 425.16(c)(1) mandates an award of attorneys' fees and costs even to a partially prevailing party of an anti-SLAPP motion to strike, and that ABC is the undisputed prevailing party of the anti-SLAPP motion, having eliminated "2/3 of Blackburn's complaint." Def.'s Reply at 3, Dkt. No. 62. ABC also argues that the FDCPA's fee-shifting scheme is irrelevant to determine whether to grant attorneys' fees in an anti-SLAPP fee motion because at issue is the successful anti-SLAPP motion, not the RFDCPA. *Id.* at 4. Finally, ABC denies Blackburn's allegations that hours and the hourly rate are inflated and contends that ABC provided sufficient evidence for the Court to determine a reasonable award of attorneys' fees and costs. *Id.* at 4-6.

Blackburn disputes neither ABC's requested fees incurred in connection with the fee motion nor ABC's costs. Pl.'s Opp'n.

II. STANDARD OF REVIEW

Section 425.16 entitles the prevailing defendant on a special motion to strike to recover his reasonable attorneys' fees and costs. § 425.16(c)(1); *see Christian Research Inst. v. Alnor*, 165 Cal. App. 4th 1315, 1321 (2008); *see also Metabolife Int'l, Inc. v.*

1 *Wornick*, 213 F. Supp. 2d 1220, 1221 (S.D. Cal. 2002). The prevailing party requesting
 2 attorneys' fees and costs bears the burden of supporting the request with detailed time
 3 records of hours worked, the rates claimed, and the costs incurred. *See Van Gerwen v.*
 4 *Guar. Mut. Life Co.*, 214 F.3d 1041, 1045 (9th Cir. 2000); *Metabolife*, 213 F. Supp. 2d at
 5 1222. The district court considers whether the prevailing defendant's requested fees are
 6 reasonable based on the lodestar method—multiplying the number of hours reasonably
 7 expended on the litigation by a reasonable hourly rate. *Id.* The award may include not
 8 only the fees and costs incurred in connection with the anti-SLAPP motion, but also the
 9 fees and costs incurred in enforcing the right to the mandatory fees. *See Ketchum v.*
 10 *Moses*, 24 Cal. App. 4th 1122, 1141 (2001). The prevailing defendant may recover only
 11 those “fees and costs incurred in connection with the motion to strike, and not the entire
 12 action.” *Lafayette Morehouse v. Chronicle Publi'g Co.*, 39 Cal. App. 4th 1379, 1383
 13 (1995). Further, if an anti-SLAPP motion and a motion unrelated to the anti-SLAPP
 14 statute are brought together and the facts and legal arguments are common among the
 15 claims subject to the anti-SLAPP motion and claims not subject to the anti-SLAPP
 16 motion, the attorneys' fees need not be apportioned between the motions; the fees
 17 incurred for both motions may be granted. *See Hadley v. Krepel*, 167 Cal. App. 3d 677,
 18 685-86 (1985); *see also Kearney v. Foley and Lardner*, No. 05-cv-2112-L(LSP), 2008
 19 U.S. Dist. LEXIS 21115, at *9-10 (S.D. Cal. March 18, 2008).

20 The district court has broad discretion in determining whether the requesting party
 21 is the prevailing party and whether the requested amount of attorneys' fees and costs is
 22 reasonable. *Metabolife*, 213 F. Supp. 2d at 1222. The district court must determine
 23 whether a defendant who partially prevails on an anti-SLAPP motion is considered the
 24 prevailing party under the statute. *Mann v. Quality Old Time Serv.*, 139 Cal. App. 4th
 25 328, 340 (2006). Further, the court must determine whether the hourly rate and the
 26 expended number of hours are reasonable based on the court's experience. *Van Gerwen*,
 27 214 F.3d at 1045. The district court must exclude from the lodestar calculation the
 28 amount of hours that are excessive, redundant, or otherwise unnecessary. *Id.*

III. DISCUSSION

A. Under § 425.16(c)(1), ABC is Entitled to Attorneys' Fees and Costs as the Prevailing Party of the Anti-SLAPP Motion.

Because ABC prevailed in striking Blackburn's state-law claims based on ABC's anti-SLAPP motion, the Court GRANTS reasonable attorneys' fees and costs to ABC under § 425.16(c)(1). *See* Order Grant Mtn. Dismiss. Awarding reasonable attorneys' fees and costs to the prevailing party in an anti-SLAPP motion is mandatory under § 425.16(c)(1). *Christian Research Inst.*, 165 Cal. App. 4th at 1321. ABC submitted a dual-motion brief to strike Blackburn's state-law claims under the anti-SLAPP statute and to dismiss Blackburn's federal claim under Fed. R. Civ. P. 12(b)(6). Def.'s Mot. Strike. Although ABC was unsuccessful in dismissing the federal claim, ABC was undisputably the victor in striking the state-law claims. *See* Order Grant Mtn. Dismiss.

1. The RFDCPA's Fee-shifting Scheme is Inapplicable.

Blackburn's argument for applying the RFDCPA's fee-shifting scheme to ABC's motion for attorneys' fees is unpersuasive. First, the Court granted ABC's motion to strike Blackburn's RFDCPA claim based on the anti-SLAPP statute, not the RFDCPA. Order Grant Mtn. Dismiss. Second, the anti-SLAPP statute has no exception to the rule of mandatory award of attorneys' fees and costs for the prevailing party that is applicable here and no requirement on behalf of the prevailing party to show that Blackburn brought this action in bad faith or for the purposes of harassment. *See* Cal. Code Civ. Proc. § 425.16(d). Third, because ABC succeeded in striking not only the RFDCPA claim, but also the § 17200 claim, Blackburn's argument to apply the RFDCPA's fee-shifting scheme to all of ABC's requested attorneys' fees does not address the fact that the RFDCPA is inapplicable to ABC's successful motion to strike the § 17200 claim. *See* Pl.'s Opp'n at 3-5.

2. The RFDCPA is not a "Special Statute" in Relation to the Anti-SLAPP Statute.

Despite the RFDCPA and FDCPA's similar statutory language, the Court is unconvinced that the RFDCPA's fee-shifting scheme trumps that of the anti-SLAPP

statute, which mandates an award of attorneys' fees and costs to the prevailing party of an anti-SLAPP motion. Blackburn does not contest the fact that ABC is the prevailing party, thus ABC, as the prevailing party to a successful anti-SLAPP motion, must be awarded reasonable attorneys' fees and costs associated with its anti-SLAPP motion and related fee motion. *See id.*; Def.'s Mot. Atty's Fees. Instead, Blackburn argues that "...where a general statute, standing alone, includes the same matter as a special statute, and thus conflicts with it, the special act is to be considered as an exception to the general statute, whether it was passed before or after the general enactment." Pl.'s Opp'n at 4 (quoting *In re Ward*, 227 Cal. App. 2d 369, 374-75 (1964)). Blackburn fails to show that the RFDCPA is the special enactment, while the anti-SLAPP statute is the general enactment, both dealing with the "same matter." *See id.*; *In re Ward*, 227 Cal. App. 2d at 374-75. As the prevailing party, ABC is entitled to reasonable fees.

B. ABC is Entitled Only to Attorneys' Fees and Costs Reasonably Incurred in Connection With the Anti-SLAPP Motion.

Reasonable attorneys' fees and costs shall be awarded only for work performed in connection with the anti-SLAPP motion and associated motion for fees. *Ketchum*, 24 Cal. 4th at 1141. The Court will deny fees that are not unambiguously associated with the anti-SLAPP motion and associated motion for fees. Because § 425.16(c)(1) shall be construed broadly in favor of awarding the prevailing party reasonable attorneys' fees, if the claims subject to the anti-SLAPP motion share common facts and legal arguments with claims not subject to the anti-SLAPP motion, the attorneys' fees generated by the anti-SLAPP motion litigation shall be awarded. *Briggs v. Eden Council for Hope and Opportunity*, 19 Cal. 4th 1106, 1119 (1999); *Kearney*, 2008 U.S. Dist. LEXIS 21115, at *8-9.

ABC alleges to have billed a total of 52.9 hours from February 2011 to September 2011 at a rate of \$395.00 for a total lodestar of \$20,895.50. Weisberg Decl. at 2. Blackburn argues that this figure is inflated because some of ABC's alleged time expended on various tasks is either excessive or does not qualify as fees incurred in

1 connection with the anti-SLAPP motion. Pl.'s Opp'n at 6-13.

2 **1. ABC is Entitled to Fees Related to the Anti-SLAPP Motion Only.**

3 Several of Blackburn's arguments in favor of reducing ABC's requested fees are
 4 persuasive. First, a few of the entries in ABC's billing records do not specify whether the
 5 fees were incurred in relation to the anti-SLAPP motion to strike or the Fed. R. Civ. Proc.
 6 12(b)(6) motion to dismiss. Weisberg Decl. at 5-7. ABC presented both the motion to
 7 strike Blackburn's state-law claims and the motion to dismiss Blackburn's federal claim
 8 in a dual-motion brief, rather than two separately briefed motions. Def.'s Mot. Strike.
 9 Blackburn concedes that "...the FDCPA causes of action arise from the same alleged
 10 actions, events and behavior" as the state law claims, however, the legal arguments for
 11 each motion differ significantly, thus warranting a disaggregation of the fees incurred on
 12 the motion to strike and the motion to dismiss. See Pl.'s Opp'n at 8. ABC has the burden
 13 of showing that its claimed fees were incurred in connection with only the anti-SLAPP
 14 motion. See *Van Gerwen*, 214 F.3d at 1045; *Metabolife*, 213 F. Supp. 2d at 1222.
 15 Accordingly, the Court DENIES fees that were not specifically assigned to the anti-
 16 SLAPP motion and associated fee motion, since ABC failed to meet its burden of proof.

17 Second, ABC seeks to recover for time spent reviewing and opposing Blackburn's
 18 motion to amend her complaint. *Id.* at 7. "[O]nly those fees and costs incurred in
 19 connection with the motion to strike, not the entire action" shall be awarded. *Lafayette*
 20 *Morehouse*, 39 Cal. App. 4th at 1381-82. Blackburn's motion to amend her complaint
 21 was not exclusively in connection with ABC's successful motion to strike. Pl.'s Mot.
 22 Amend, Dkt. No. 27. Therefore, the Court DENIES ABC's fees incurred reviewing and
 23 responding to Blackburn's motion to amend.

24 Third, ABC submits one ambiguous time sheet entry, for which the Court DENIES
 25 compensation. See *Van Gerwen*, 214 F.3d at 1045. A conference call on June 15, 2011
 26 lists participants involved but has no mention of the subject matter(s) discussed. See
 27 Weisberg Decl. at 6. The Court cannot assume that this task was related to the anti-
 28 SLAPP motion. *Id.*

Fourth, ABC billed for a clerical task for which an award of attorneys' fees is inappropriate. *See Missouri v. Jenkins*, 491 U.S. 274, 288 n. 10 (1989); *see also Prison Legal News v. Schwarzenegger*, 561 F. Supp. 2d 1095, 1102-1103 (N.D. Cal. 2008). On June 3, 2011, ABC's counsel billed one hour to "[d]raft table of contents and table of authorities for reply memorandum of points & authorities to anti-SLAPP opposition." Weisberg Decl. at 6. There is no need for an attorney, billing at \$395.00 per hour, to perform this task. Therefore, this requested fee is DENIED.

Apart from the fee contentions, the Court noticed two minor errors in the calculation of fees that inflated ABC's actual fees incurred. First, the summation of the hours incurred in connection with the anti-SLAPP motion and related fee motion should be 52.8, rather than 52.9 hours, thus inflating time expended by 0.10 hour. *See Weisberg Decl. at 7*. Second, ABC claims five time sheet entries between April 28, 2011 and April 29, 2011, which have dates out of chronological order and task descriptions and time expenditures that are misaligned. Weisberg Decl. at 5. The Court interprets that ABC intended to shift the time expenditure entries up by one slot. After the shift, the Court DENIES a fee award for one time sheet entry billed on April 29, 2011, which is duplicative of task number 10 (Attachment A). *See id.*; Pl.'s Opp'n Mot. Att'y Fees at 10-11.

2. ABC's Hourly Rate is Reasonable.

Blackburn's argument for an hourly rate of \$225.00, \$170.00 lower than ABC's requested rate, is unpersuasive. *See Pl.'s Opp'n*. Blackburn's expert's testimony in another case unrelated to anti-SLAPP motions does not justify an adjustment of ABC's requested rate. *See id.* Mr. Weisberg's declaration provides sufficient evidence upon which the Court can find that ABC's counsels' rate of \$395.00 per hour is reasonable. *See Weisberg Decl. at 2*. *See, e.g., Carrizosa v. Legal Recovery Servs.*, No. 05-CV-0228-RMW, 2011 WL 1674964, at *1 (N.D. Cal May 3, 2011) (calculating a FDCPA attorneys' fees award using hourly rates between \$350.00 and \$480.00).

1 **3. The Court GRANTS Uncontested Costs and Fees.**

2 Blackburn contests neither ABC's requested attorneys' fees associated with
3 litigating the fees motion nor ABC's requested costs. Pl.'s Opp'n. Therefore, the Court,
4 finding the requests reasonable, awards ABC's requested fees incurred in connection with
5 the fee motion of \$2,923.00 (7.4 hours x \$395.00) and costs of \$311.50.

6 After excluding all non-anti-SLAPP-related time entries, adjusting for ABC's
7 lodestar calculation mistakes, and adding in anti-SLAPP-motion-related costs, ABC's
8 lodestar amount and costs are reduced to \$14,926.50, an amount the Court finds to be
9 reasonable. To calculate this amount, the Court created a spreadsheet, Attachment A,
10 which contains only entries that are unambiguously associated with ABC's anti-SLAPP
11 motion.

12 **IV. RECOMMENDATION**

13 For the reasons set forth above, this Court recommends that the District Court
14 award ABC's attorneys' fees in the amount of \$14,615.00 and costs in the amount of
15 \$311.50. The parties may object to this recommendation within fourteen days of the
16 filing date. *See* Fed. R. Civ. P. 72(a); Civil L.R. 72-2.

17
18 Date: February 24, 2012

19 
20 NATHANAEL M. COUSINS
21 United States Magistrate Judge
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Attachment A

Attachment A
Attorneys Fees and Costs Awarded to Weisberg & Miller
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No.	Date	Rate	Hours	Charge	Description
1	4/18/2011	\$395.00	0.80	\$316.00	Office conference regarding bringing Anti-SLAPP motion
2	4/20/2011	\$395.00	0.40	\$158.00	Legal research special motion to strike under Anti-SLAPP; and office conference re: same
3	4/20/2011	\$395.00	0.40	\$158.00	Legal research re: anti-SLAPP cases dealing with false proofs of service
4	4/25/2011	\$395.00	3.30	\$1,303.50	Draft anti-SLAPP motion, including legal research on special requirements for motion in Federal Court - Begin
5	4/26/2011	\$395.00	2.60	\$1,027.00	Draft anti-SLAPP motion - Continued
6	4/27/2011	\$395.00	2.30	\$908.50	Draft anti-SLAPP motion - Continued
7	4/28/2011	\$395.00	1.80	\$711.00	Draft anti-SLAPP motion - Completed
8	4/29/2011	\$395.00	2.30	\$908.50	Draft Mr. Dinehart and Mr. Carrigan's supporting declarations, and assemble supporting documentation for exhibits thereto - Completed; draft proposed order on anti-SLAPP motion
9	4/28/2011*	\$395.00	1.20	\$474.00	WSW Receive, review, edit, and revise anti-SLAPP motion, meeting with Attorney, Kenneth J. Sperandio, Jr. regarding same
10	4/29/2011*	\$395.00	0.30	\$118.50	KJS E-mail sent to Mr. Dinehart and Mr. Carrigan re: declarations to support anti-SLAPP motion; and draft declarations - Begin
11	4/29/2011*	\$395.00	0.40	\$158.00	KJS Revise anti-SLAPP motion after conference with attorney Theoharis. (ABC's in-house counsel)
12	5/1/2011	\$395.00	0.10	\$39.50	Telephone with Andy Carrigan re: completing declaration to support anti-SLAPP motion
13	5/27/2011	\$395.00	0.20	\$79.00	Review underlying documents from San Mateo state court action upon which Blackburn's case is based with focus on use in anti-SLAPP
14	6/1/2011	\$395.00	3.00	\$1,185.00	KJS Review opposition to anti-SLAPP motion; research cited authorities and refuting authority; and draft reply points & authorities - CSM Review and analysis of declarations filed by plaintiff's attorney in support of opposition to SLAPP motion
16	6/2/2011	\$395.00	6.40	\$2,528.00	Review opposition to anti-SLAPP motion; research cited authorities and refuting authority; and draft reply points & authorities - Continued
17	6/3/2011	\$395.00	0.80	\$316.00	Continued work to supplement arguments for SLAPP motion
18	6/3/2011	\$395.00	1.10	\$434.50	Conference with attorney Weisberg re: initial draft of reply points & authorities to anti-SLAPP opposition; revise points and authorities to include additional arguments
19	6/15/2011	\$395.00	0.40	\$158.00	Conference with attorney Fletcher re: preparation for oral argument at anti-SLAPP hearing
20	6/16/2011	\$395.00	0.10	\$39.50	Review court order on anti-SLAPP motion (court decided to rule on motion without a hearing (notice no hearing would not be held ever received))
21	6/21/2011	\$395.00	0.40	\$158.00	Draft notice of compliance with anti-SLAPP motion notification to Cal. Judicial Counsel, and provide instructions to staff re: same
Anti-SLAPP Motion			29.60	\$11,692.00	
Fee Motion Total			7.40	\$2,923.00	
Cost Total				\$311.50	
Grand Total			37.00	\$14,926.50	

Reference: Dkt. No. 46.

Note: Typos found in the submitted time sheet have been corrected.

* These entries have time and task descriptions that appear to be misaligned on the time sheet.